

Glenda Wiles

From: MACO Information [macopb@maco.cog.mt.us]  
Sent: Friday, July 20, 2007 11:37 AM  
Subject: URGENT Proposed Rules Changes for Plats

RECEIVED

JUL 20 2007

Ravalli County Commissioners

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cc'd to  
Kane +  
Kene

DATE: July 20, 2007

TO: Commissioners  
Clerk and Recorders  
Planners

FROM: Harold Blattie, Executive Director  
Montana Association of Counties

Subject: Proposed Administrative Rules Changes from the Board of Surveyors

Attached are proposed rules changes for subdivision plats and certificates of survey that have been proposed by the Board of Professional Surveyor's as well as a memo prepared by MACo Land Use Attorney, Myra Shults.

The proposed changes were initiated in order to limit surveyors liability related to plats. We would ask that you review the proposed changes as well as Myra's memo and submit your comments to the Board no later than July 30th. Please copy me with your responses.

Comments should be sent to :

bjasmin@mt.gov  
Brooke T Jasmin  
Program Manager  
Montana Boards of Professional Engineers & Professional Land Surveyors, Architects and  
Landscape Architects  
(406)841-2351 Fax(406)841-2309

Thanks,

L Harold Blattie, Executive Director  
Montana Association of Counties  
2715 Skyway Drive  
Helena MT 59602  
<<mailto:blattie@maco.cog.mt.us>>  
(406) 444-4360

<<Proposed changes to ARM 24 183 1107 (2).doc>> <<Surveyor ARM M E M O R A N D U M.doc>>

7/20/2007

**ARM 24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS**

(1) A final subdivision plat may not be approved by the governing body or filed by the county clerk and recorder unless it complies with the following requirements:

(a) Final subdivision plats must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches or 24 inches by 36 inches overall to include a 1 1/2-inch margin on the binding side.

(b) One signed copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a stable-base polyester film or equivalent must be submitted.

(c) If more than one sheet must be used to adequately depict the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.

(d) A survey that modifies a filed subdivision plat must be entitled "amended plat of (lot, block and name of subdivision being amended)," and unless it is exempt from subdivision review by 76-3-201 or 76-3-207(1)(d) or (e), MCA, may not be filed with the county clerk and recorder unless it meets the filing requirements for final subdivision plats specified in this rule.

(2) A final plat drawing and dedication submitted for approval filing must show or contain, on its face or on separate sheets referred to on the plat, the following information. ~~The surveyor may, at his or her discretion, provide additional information regarding the survey.~~ only the following land survey and legal description elements on its actual graphic map face or on sequentially numbered separate sheets required by ARM 24.183.1107 (1)(c):

(a) A title or title block indicating the quarter-section, section, township, range, principal meridian, county and, if applicable city or town, in which the subdivision is located. The title of the plat must contain the words "plat" and either "subdivision" or "addition".

(b) The name of the person(s) who commissioned the survey and the name(s) of the owner of the land to be subdivided if other than the person(s) commissioning the survey, the names of any adjoining platted subdivisions, and the numbers of any adjoining certificates of survey previously filed.

(c) A north arrow.

(d) A scale bar. (The scale must be sufficient to legibly represent the required information and data on the plat.)

(e) The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 24.183.1101(1)(c).

(i) If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must bear a certification by the surveyor as to the reason the monuments have not been set and the date by which they will be set.

(ii) All monuments found during a retracement that influenced the position of any corner or boundary indicated on the plat must be clearly shown as required by ARM 24.183.1101(1)(c).

(f) The location of any section corners or corners of divisions of sections pertinent to the survey.

(g) Witness and reference monuments and basis of bearings. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown on the plat. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the plat shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.

(h) The bearings, distances and curve data of all boundary lines. If the subdivision is bounded by an irregular shoreline or body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.

(i) The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel with one or more riparian boundaries as the parcel existed at the time of survey.

(ii) For purposes of these regulations a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

(i) Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the plat must include the bearings of radial lines or chord length and bearing.

(j) Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.

(k) The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the subdivision.

(l) All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot, and the total acreage of all lots. (Excepted parcels

must be marked "Not included in this subdivision" or "Not included in this plat," as appropriate, and the bearings and lengths of these excepted boundaries must be shown.)

(m) All streets, alleys, avenues, roads and highways; their widths (if ascertainable) from public records, bearings and area; the width and purpose of all road rights-of-way and all other easements that will be created by the filing of the plat; and the names of all streets, roads and highways.

(n) The location, dimensions and areas of all parks, common areas and other grounds dedicated for public use.

(o) The total acreage of the subdivision.

(p) A narrative legal description of the subdivision as follows:

(i) If the parcel being subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.

(ii) If the plat depicts the division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the number of the parcel or lot affected by the survey.

(iii) If the parcel surveyed does not fall within (2)(p)(i) or (ii), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.

(iv) If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.

(q) The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act.

(r) A memorandum of any oaths administered under 76-3-405, MCA.

(s) The dated, signed and acknowledged consent to the subdivision of the owner of the land being subdivided. For purposes of this rule when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "owner" and "owner of the land" refers to the seller under the contract-for-deed.

(t) Certification by the governing body that the final subdivision plat is approved.

**(u) Space for the clerk and recorder's filing information.**

(v) If applicable, the owner's certificate of dedication of streets, parks, playground easements or other public improvements.

(w) If applicable, a certificate of the governing body expressly accepting any dedicated land, easements or improvements. An acceptance of a dedication is ineffective without this certification.

(x) If applicable, the certificate of the examining land surveyor.

(y) If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.

**~~(3) The following documents must appear on the face of or accompany the approved final plat when it is presented to the county clerk and recorder for filing:~~** Any land use requirements or restrictions including physical limitations or use conditions of any site or parcel created shall be a separate accompanying document which may be referenced on the plat by discrete reference blocks consisting of recording number(s), signature and brief title or description of the recorded instrument. The following separate documents, when required, must accompany the approved final plat when it is presented to the county clerk and recorder:

**~~(a) If applicable, the owner's certificate of dedication of streets, parks, playground easements or other public improvements.~~**

**~~(b) If applicable, a certificate of the governing body expressly accepting any dedicated land, easements or improvements. An acceptance of a dedication is ineffective without this certification.~~**

**(a)** A certificate of a title abstractor showing the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.

Deleted: o

**(db)** Copies of any covenants or deed restrictions relating to the subdivision.

**(ec)** If applicable, a certificate from the state department of environmental quality stating that it has approved the plans and specifications for water supply and sanitary facilities.

**(fl)** A certificate from the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvement to be installed.

(g-) Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both.

~~(h) If applicable, the certificate of the examining land surveyor.~~

~~(i) If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.~~

(j) The certification of the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid. (History: 76-3-403, MCA; IMP, 76-3-403, MCA; NEW, Eff. 1/5/74; EMERG, AMD, Eff. 7/1/74; AMD, Eff. 10/5/74; AMD, Eff. 4/5/76; AMD, 1977 MAR p. 959, Eff. 11/26/77; AMD, 1980 MAR p. 2806, Eff. 10/17/80; TRANS, from Dept. of Comm. Affairs, Ch. 274, L. 1981, Eff. 7/1/81; AMD, 2000 MAR p. 1041, Eff. 2/11/00; TRANS, from Commerce, 2005 MAR p. 966.)

## M E M O R A N D U M

**To:** Brooke T. Jasmine

**From:** Myra L. Shults, Land Use Consultant Attorney to the Joint Powers Insurance Authority of the Montana Association of Counties

**Re:** Comments on proposed changes to ARM 24.183.1107

**Date:** July 11, 2007

Although the proposed amendment sent out on June 20, 2007 does not show additions to the ARM, my comparison of the existing ARM to the proposed ARM notes:

**Comment 1:** ARM 24.183.1107 (2) essentially consolidates the two sentences currently found in subsection (2) into one. Further changes are

- the addition of the term “and dedication” in the second line
- the substitution of the term “filing” for the term “approval” in the second line
- the addition of the term “only” in the third line
- the addition of the phrase “surveying and legal description” preceding the word “information” in the fourth line.

The requirement the sub-subsections to (2) be on the face of the plat (or on multiple sheets of the plat) remains in the amendment.

The addition of the term “only” means clerk and recorders cannot require any information on the face of the plat that is not set forth in subsection (2).

**Comment 2:** ARM 24.183.1107 (2)(v), (w), (x) and (y) are additions to subsection (2) as some of the only “surveying and legal description” allowed by the changes to subsection (2). These have been moved from subsections (3)(a), (b), (c) and (h) and the language is the same, but now the owner’s certificate of dedication, the certificate of the governing body accepting the dedication, the certificate of the examining land survey and the certification of the county treasurer will all appear on the face of the plat, or on one of the multiple sheets of the plat.

These changes do not seem to cause a problem for me.

**Comment 3:** The language in subsection (3) has been considerably changed. The deleted subsections are now found in subsection (2) [*see* Comment 2]. It appears from the new language that specific conditions of approval will be on a separate

accompanying document, which must be recorded, and the recording information may be referenced on the face of the plat, but this is not clear. The existing subsection (3) makes the documents listed under subsection (3) mandatory, as does the new language, but removing “must appear on the face of or” means that all the documents in the sub-subsections will now be separate documents and there is the danger these documents may get lost in the shuffle.

I have tried to think of a solution, but brainstorming this new language needs to be worked out in person, with the Board and with representatives of MARLS. The purpose of moving land use requirements or restrictions to an accompanying document may lessen the liability of the surveyor but there are two problems with this:

- No matter how well the verbal description is written (e.g.: the northeast 1/3 of Lot 3 cannot be built upon), if this restriction isn’t shown on the plat, no one will truly understand it and may not even see it.
- It is unclear who will prepare the “land use requirement or restrictions” document, and whether the surveyor will be responsible for this being correct. ARM 24.183.1107 (2)(q) and 76-3-402 (1) and (2) impose a duty upon surveyors and require the plat to be in conformance with the Montana Subdivision and Platting Act and with the local regulations. My concern is not only that the separate accompanying documents will be ignored or conveniently overlooked, it is also with whether the verbal “land use requirement or restrictions” can be understood as well as they might be if they were shown on the plat, or that the document will even be correct.

At the very least the cross-reference on the plat should be mandatory and the surveyor should be required to sign and seal the separate accompanying document.

Hopefully the proposed ARM changes are in the initial stages, and the counties and the clerk and recorders will have an opportunity to comment on whatever the Board comes up with at its next meeting. It is important that all the changes be noted in the version of the ARM that is provided for public comment—the deletions and the additions—as is done with proposed legislation.

Please let me know when the meeting is so we can attend.